

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                            |   |              |
|----------------------------|---|--------------|
| DIANE ROMANO               | : | CIVIL ACTION |
| Plaintiff                  | : |              |
|                            | : |              |
| v.                         | : |              |
|                            | : |              |
| BUCKS COUNTY WATER & SEWER | : |              |
| AUTHORITY, et al.          | : |              |
| Defendants                 | : | NO. 03-2296  |

MEMORANDUM AND ORDER

McLaughlin, J.

March \_\_\_\_, 2004

Diane Romano has sued Bucks County Water & Sewer Authority and two of its employees, Benjamin Jones and Jason Hillaert, under 42 U.S.C. § 1983 and Pennsylvania's Whistleblower Law ("Whistleblower Law"), 43 Pa. Cons. Stat. §§ 1422-1428. The plaintiff has demanded a jury trial and punitive damages under both statutes.

The defendants have moved to strike the jury trial demand with regard to the plaintiff's Whistleblower Law claims and to dismiss all punitive damage claims except with regard to the § 1983 action against Messrs. Jones and Hillaert in their

individual capacities.<sup>1</sup> The parties discussed this motion at a status conference held on October 10, 2003.

The plaintiff concedes that punitive damages are not available against the defendant Bucks County Water & Sewer Authority because it is a municipal body. See City of Newport v. Fact Concerts, 453 U.S. 247 (1981). The plaintiff also agrees that punitive damages are not available against the defendants in their official capacities.

Two issues remain before the Court, both with regard to Pennsylvania's Whistleblower Law: (1) whether there is a right to a jury trial in the present action; and (2) whether punitive damages are available.

The Court finds that the plaintiff is entitled to a jury trial on her Whistleblower Law claims and will deny the defendant's motion to strike the jury demand as to these claims. The Court will issue a memorandum on this issue at a later date.

The next question is whether punitive damages are available under the Whistleblower Law. The Whistleblower Law

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<sup>1</sup> The defendants' brief and proposed order ask for dismissal of punitive damages claims against the individual defendants in their official capacity. The defendants' brief takes the position that punitive damages are categorically unavailable under the Whistleblower Law. The Court will construe the defendants to have moved for dismissal of all punitive damage claims except those under Section 1983 against Mr. Jones and Mr. Hillaert in their individual capacities. The plaintiff has similarly interpreted the defendants' motion and has responded accordingly.

offers a specific list of remedies including, for example, reinstatement, back pay, the reinstatement of fringe benefits and actual damages. The list does not include punitive damages. Nothing in the statute suggests the availability of remedies outside those identified. The plain language of the statute strongly suggests that punitive damages are unavailable under the Whistleblower Law. 43 Pa. Cons. Stat. § 1425.

The Supreme Court of Pennsylvania has recently confirmed this view in dicta, stating that "recovery under the statute is proportionate to the harm suffered, as punitive damages are not available." O'Rourke v. Commonwealth, 778 A.2d 1194, 1203 (Pa. 2001).

Prior to O'Rourke, a court in this district considered the text of the statute and came to the same conclusion. Rankin v. City of Philadelphia, 963 F. Supp. 463, 478 (E.D. Pa. 1997). The Rankin court noted that a contrary result would conflict with the direction of both the General Assembly and the Pennsylvania Supreme Court. Id. (citing 1 Pa. Cons. Stat. Ann. § 1504 and In re 1632 S. Broad Street, 94 A.2d 772, 773 (Pa. 1953)). I agree with this analysis. See also Lawrence v. City of Bethlehem, 97-CV-1824, 1999 WL 124471 (E.D. Pa. Mar. 1, 1999) (following Rankin and granting defendants' motion for summary judgment on punitive damage claims under the Whistleblower Law).

Because punitive damages are not available under the Whistleblower Law, the Court will grant the defendants' motion to dismiss the punitive damage claims against Mr. Jones and Mr. Hillaert under the statute.

An appropriate order follows.

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ORDER

AND NOW, this \_\_\_\_ day of March, 2004, upon consideration of the defendants' Motion to Dismiss and Motion to Strike Jury Demand (Docket No. 2), the plaintiffs' opposition thereto (Docket No. 3), the defendants' supplemental memorandum of law (Docket No. 7), the plaintiff's response thereto (Docket No. 8), and following oral argument on the motion on October 10, 2003, IT IS HEREBY ORDERED that the motion is GRANTED in part and DENIED in part for the reasons stated in a memorandum of today's date. The Motion to Strike the Jury demand with regard to the Whistleblower Law is denied. All claims for punitive damages are dismissed, except for those under Section 42 U.S.C. § 1983 against the individual defendants in their individual capacities.

BY THE COURT:

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MARY A. McLAUGHLIN, J.